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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

STEPHEN ALLEN WALKER,

Defendant and Appellant.

F063428

(Super. Ct. No. MF009482A)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Kern County. Michael G. Bush, Judge.

James Bisnow, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, and Louis M. Vasquez, Deputy Attorney General, for Plaintiff and Respondent.

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* Before Cornell, Acting P.J., Kane, J. and Poochigian, J.

Appellant, Stephen Allen Walker, pled no contest to being a felon in possession of a firearm (Pen. Code, § 12021, subd. (a)(1))¹ and admitted a prior prison term enhancement (§ 667.5, subd. (b)) and allegations that he had two prior convictions within the meaning of the three strikes law (§ 667, subds. (b)-(i)).

On September 15, 2011, the court struck one strike conviction and sentenced Walker to an aggregate seven-year term.

On appeal, Walker contends the court abused its discretion when it refused to strike both strike convictions. We will affirm.

FACTS

The Instant Offense

In October 2010, Walker's 82-year-old father bought a house in Bear Valley. Walker lived with his father, who suffered from dementia, and was his primary caregiver.

On January 24, 2011, Walker's father reported to a Bear Valley police officer that Walker was on parole and had been "inquiring about firearms." The officer contacted Walker's parole agent and met him at the police department. They then went to Walker's residence to conduct a parole search. During a search of an office that Walker shared with his father, the officers found an antique shotgun and two antique rifles in plain view in an open closet. Walker told the officers he found the firearms the previous day on top of a cabinet while cleaning and reorganizing his father's garage. Walker had been trying to find their worth on the Internet so he could sell them and give the money to his father. A search of Walker's laptop disclosed that Walker had been searching the Internet for information specific to the three firearms found and for information about gun dealers in the surrounding area.

On March 30, 2011, the district attorney filed an information charging Walker with the offense and allegations he pled to.

¹ All further statutory references are to the Penal Code.

On July 8, 2011, Walker entered his plea in exchange for the court's agreement to strike one strike conviction and to sentence Walker to a maximum term of seven years.

Walker's Criminal Record

Walker's probation report indicates that he was convicted: in 1972 of grand theft (Pen. Code, § 487); in 1974 and 1977 of possession of a controlled substance (Health & Saf. Code, § 11350); in 1990 of driving under the influence of alcohol or drugs (Veh. Code, § 23152, subd. (a)); and in 1999 and 2000 of possession for sale of marijuana (Health & Saf. Code, § 11359). In 2002, Walker was convicted of six sexual offenses that he committed against his stepdaughter between 1982 and 1988, including the continuous sexual abuse of a child under the age of 14 (Pen. Code, § 288.5), and sentenced to 20 years in prison. However, his convictions were overturned on appeal.

In August 2003, Walker pled no contest to two counts of lewd and lascivious conduct with a child under the age of 14 (Pen. Code, § 288, subd. (a)), which were also based on his sexual assault of his stepdaughter. On January 7, 2004, Walker was sentenced to an aggregate eight-year term. After his release from prison on April 27, 2008, Walker was returned to prison two times on parole violations and he was on parole when he committed the instant offense. He also violated his felony probation twice in 1977.

The Romero² Motion

On August 17, 2011, Walker filed a *Romero* motion in the trial court asking the court to dismiss both prior strike convictions.

On August 19, 2011, Walker filed a statement in mitigation.

On August 30, 2011, he filed several supplemental letters in support of his statement in mitigation.

² *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497 (*Romero*).

On September 15, 2011, after hearing argument, the court struck only one of Walker’s prior strike convictions. It then sentenced Walker to an aggregate seven-year term, the aggravated term of three years, doubled because of the remaining strike conviction, and a one-year prior prison term enhancement.

DISCUSSION

Section 1385 (section 1385) provides, in relevant part, “The judge or magistrate may, ... in furtherance of justice, order an action to be dismissed.” (§ 1385, subd. (a).) In *Romero, supra*, 13 Cal.4th at pages 529-530, the California Supreme Court concluded that section 1385, subdivision (a) “permit[s] a court acting on its own motion to strike prior felony conviction allegations in cases brought under the Three Strikes law.” But although “[a] defendant has no right to make a motion, and the trial court has no obligation to make a ruling, under section 1385,” a defendant “does have the right to ‘invite the court to exercise its power by an application to strike a count or allegation of an accusatory pleading, and the court must consider evidence offered by the defendant in support of his assertion that the dismissal would be in furtherance of justice.’ [Citation.]” (*People v. Carmony* (2004) 33 Cal.4th 367, 375 (*Carmony*)). And “a trial court’s failure to dismiss or strike a prior serious and/or violent felony conviction allegation under section 1385 should be reviewed for abuse of discretion.” (*Id.* at p. 376.)

In *People v. Williams* (1998) 17 Cal.4th 148, our Supreme Court explained how a court should go about exercising that discretion: “[I]n ruling whether to strike or vacate a prior serious and/or violent felony conviction allegation or finding under the Three Strikes law, on its own motion, ‘in furtherance of justice’ pursuant to [section 1385, subdivision (a)], or in reviewing such a ruling, the court in question must consider whether, in light of the nature and circumstances of his present felonies and prior serious and/or violent felony convictions, and the particulars of his background, character, and prospects, the defendant may be deemed outside the scheme’s spirit, in whole or in part, and hence should be treated as though he had not previously been convicted of one or

more serious and/or violent felonies.” (*Id.* at p. 161.) “[T]he Three Strikes law does not require *multiple* violent felony offenses to come within the statutory scheme. *Williams* and its progeny do not hold that a defendant’s criminal career must consist entirely or principally of violent or serious felonies to bring a defendant within the spirit of the Three Strikes law.” (*People v. Strong* (2001) 87 Cal.App.4th 328, 340.)

In determining whether a court has abused its discretion in refusing to strike a strike, “we are guided by two fundamental precepts. First, “[t]he burden is on the party attacking the sentence to clearly show that the sentencing decision was irrational or arbitrary. [Citation.] In the absence of such a showing, the trial court is presumed to have acted to achieve legitimate sentencing objectives, and its discretionary determination to impose a particular sentence will not be set aside on review.” [Citation.] Second, a ““decision will not be reversed merely because reasonable people might disagree. ‘An appellate tribunal is neither authorized nor warranted in substituting its judgment for the judgment of the trial judge.’” [Citation.] Taken together, these precepts establish that a trial court does not abuse its discretion unless its decision is so irrational or arbitrary that no reasonable person could agree with it.” (*Carmony, supra*, 33 Cal.4th at pp. 376-377; accord, *People v. Cluff* (2001) 87 Cal.App.4th 991, 997-998 [no abuse of discretion unless ruling “““falls outside the bounds of reason’ under the applicable law and the relevant facts [citations]”” [Citation.]”].)

Walker argues the court should have struck both strike convictions because he “had no record of violence in more than 20 years” and his current offense was merely a technical violation because it “amounted to a ‘status offense’ and nothing more.” In doing so, Walker is essentially asking this court to reweigh the evidence and substitute our judgment for that of the trial court. We decline his invitation to do so. “Where the record demonstrates that the trial court balanced the relevant facts and reached an impartial decision in conformity with the spirit of the law, we shall affirm the trial court’s ruling, even if we might have ruled differently in the first instance.” (*People v. Myers*

(1999) 69 Cal.App.4th 305, 310 (*Myers*), quoted with approval in *Carmony, supra*, 33 Cal.4th at p. 378.) Further, the record in this case shows that the court understood its discretionary authority and it weighed all of the competing facts to reach a reasonable conclusion. After evaluating the entirety of that information, the court drew its ultimate conclusion and exercised its discretion to strike one of Walker's strike convictions. In view of these facts and circumstances, Walker has failed to show an abuse of discretion. (See *Carmony, supra*, 33 Cal.4th at pp. 378-380; *Myers, supra*, 69 Cal.App.4th at p. 310.)

DISPOSITION

The judgment is affirmed.